

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: SJR 626

INTRODUCER: Senator Saunders

SUBJECT: Eminent Domain

DATE: April 19, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Herrin	Yeatman	CA	Favorable
2.			CM	
3.			JU	
4.			RC	
5.				
6.				

I. Summary:

This joint resolution proposes to amend Section 6 of Article X of the State Constitution to provide that the taking of property for economic development or to benefit a particular class of identifiable individuals does not constitute a public purpose for which private property may be taken by eminent domain. It provides exceptions for a convention center, sports stadium, sports arena, coliseum, or auditorium if the taking of the private property, as authorized by law, is approved by a majority of the voters in the jurisdiction where the project is located.

This joint resolution, upon the approval of the electorate, amends Section 6 of Article X of the State Constitution.

II. Present Situation:

Eminent Domain

The Florida Legislature is vested with the power of eminent domain and constitutional limitations on that power. Article X, s. 6 of the Florida Constitution, provides:

- (a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.
- (b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

The Legislature can delegate that authority to agencies of government through legislative enactments.¹

Statutory Eminent Domain Procedures

The statutory eminent domain procedures in chapter 73, F.S., include presuit negotiations between the entity exercising its rights and the fee owner, offers of judgment, jury trials, compensation, severance and business damages, and costs and attorneys' fees related to the proceeding. Procedures under eminent domain require a trial by a jury of 12 in the local venue. Eminent domain procedures take precedence over all other civil matters. Supplementary procedures for eminent domain actions in chapter 74, F.S., are commonly referred to as "quick-take" provisions. Under the quick-take provisions, certain entities, including municipalities and public utilities, may take possession and title to land subject to an eminent domain proceeding in advance of the entry of final judgment. Eminent domain procedures, especially quick-take, offer certain advantages. For the property owner, the only issue in dispute is the amount of compensation for the property taken. Under quick-take, an entity is required to provide appraisals of the property and deposit (with the court) twice the estimated value of the property until a financial determination is made.

Concerns Raised by *Kelo* - In June 2005, the U.S. Supreme Court held in *Kelo* that improving the local economy meets the public purpose requirement of the Takings Clause of the U.S. Constitution. *Kelo* has raised concerns regarding the adequacy of safeguards for private property rights. In Florida, concerns are focused on the Community Redevelopment Act because takings to remedy slum and blight under the Act may have an economic development-type character and frequently involve private to private transfers. In response to public concerns about legal safeguards for Florida property owners and potential adverse implications of *Kelo*, the Committee on Judiciary undertook Senate Interim Project 2006-151, entitled *Eminent Domain*.² In part, the report described categories of takings as follows:

Takings that meet the public use or purpose requirement are generally grouped into three categories. Most takings under Florida Statutes fit within the first two categories that include takings generally considered straightforward and uncontroversial. The first category is private to public transfers, e.g., for a road, a school, or a park. The second category is private to private transfers where the property is available for the public's use, e.g., as with a railroad, a public utility, or a stadium. The third category involves private to private transfers where the existing property use inflicts an affirmative harm.³ In light of *Kelo*, the takings causing the most concern in Florida are private to private transfers under the Community Redevelopment Act (the Act), part III of chapter 163, which most closely fit the third category of takings.⁴

¹ See *Spafford v. Brevard County*, 92 Fla. 617, 110 So. 451 (Fla. 1926).

² See http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-151ju.pdf.

³ See *Kelo*, 125 S. Ct. at 2673-74 (O'Connor, J., dissenting).

⁴ See http://www.flsenate.gov/data/Publications/2006/Senate/reports/interim_reports/pdf/2006-151ju.pdf at page 2.

III. Effect of Proposed Changes:

This joint resolution proposes to amend Section 6 of Article X of the State Constitution to provide that the taking of property for economic development or to benefit a particular class of identifiable individuals does not constitute a public purpose for which private property may be taken by eminent domain. However, it provides exceptions for a convention center, sports stadium, sports arena, coliseum, or auditorium if the taking of the private property, as authorized by law, is approved by a majority of the voters in the jurisdiction where the project is located. The referendum must be held in conjunction with a general election. The joint resolution provides that the primary purpose of a taking is a question of fact. It also provides that an entity's determination that the primary purpose of a taking is not for economic development does not create a presumption as to the purpose of the taking.

The joint resolution provides ballot language.

The joint resolution provides that the amendment shall be submitted to the electors of Florida for approval or rejection at the next general election or at an earlier special election if provided by law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, Section 1 of the State Constitution provides the Legislature the authority to propose amendments to the constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed at a special election held for that purpose.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections estimates that the cost to advertise a proposed constitutional amendment twice in a newspaper of general circulation in each county prior to the 2006 general election is approximately \$50,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

None.

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